

# **Exhibit 3**

Ashton J. Hayward

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1 UNITED STATES DISTRICT COURT  
2 NORTHERN DISTRICT OF FLORIDA  
3 PENSACOLA DIVISION

4 JOSEPH GLOVER,

5 Plaintiff,

Case No.: 3:16-CV-00697-RV/CJK

6 vs.

7 CITY OF PENSACOLA, et al.,

8 Defendants.

9 UNITED STATES DISTRICT COURT  
10 NORTHERN DISTRICT OF FLORIDA  
11 PENSACOLA DIVISION

12 MATTHEW SCHMITT,

13 Plaintiff,

Case No.: 3:16-CV-00421-RV/MET

14 vs.

15 CITY OF PENSACOLA, et al.,

16 Defendants.

17 DEPOSITION OF ASHTON JAMES HAYWARD,

18 taken at the offices of Hitchcock & Associates,

19 111 South Baylen Street, Pensacola, Florida, on the

20 13th day of December, 2017, at 9:03 a.m.

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1 other.

2 Let me finish my question, and I'll let  
3 you finish your answer. If we talk on top of each  
4 other, it's hard to -- for the court reporter to take  
5 down. Fair enough?

6 A. (Nods head.)

7 Q. What's your current address?

8 A. Personal or...

9 Q. Personal.

10 A. 1708 Osceola.

11 Q. And what's the ZIP Code?

12 A. 32503.

13 Q. And what is your office address?

14 A. 222 West Main Street, 32502.

15 Q. And you are currently the mayor of the  
16 City of Pensacola?

17 A. Yes, sir.

18 Q. When did you get elected?

19 A. 2010.

20 Q. Are there four-year terms here or longer  
21 or shorter?

22 A. Four-year.

23 Q. So you were elected again in 2014?

24 A. Yes, sir.

25 Q. And up for reelection when in '18?

1 Q. I'm sorry. You were telling me you  
2 think '14 or '15?

3 A. I was reelected in '14, so it was after  
4 '14, I believe.

5 Q. And did you -- as mayor do you have the  
6 authority to hire and fire your HR director?

7 A. Yes.

8 Q. Again, without city council input or  
9 approval?

10 A. Yes.

11 Q. What is Rusty Wells' current position?

12 A. He's one of our city attorneys.

13 Q. Has he held any other position with the  
14 city, other than city attorney, since you've been  
15 elected?

16 A. When I was elected in 2010 and took  
17 office in '11, Rusty was the city attorney -- he's not  
18 the city attorney. He works in the city attorney --  
19 he's one of our city attorneys.

20 Q. You've got to help me with that one.

21 A. He's not the city attorney.

22 Q. Who is the city attorney?

23 A. Lysia Bowling.

24 Q. But Mr. Wells works in the city  
25 attorney's office?

1           A.       Yeah. He works in the city -- he helps  
2 out with the city attorney. He helps out with the  
3 finance office. He's one of our attorneys.

4           Q.       Does he have a private practice, or is  
5 he a City of Pensacola employee?

6           A.       To my knowledge he's just employed with  
7 us.

8           Q.       And Ms. Bowling -- I can't ever get her  
9 name right. Bowling?

10          A.       Bowling.

11          Q.       When did she become the city attorney?

12          A.       After '14.

13          Q.       And why did she replace Mr. Wells?

14          A.       She replaced Jim Messer.

15          Q.       Somebody in between I missed?

16          A.       Yes.

17          Q.       Why did Mr. Wells step down from being  
18 city attorney?

19          A.       That was a choice I made when I got into  
20 office.

21          Q.       And Mr. Barker, I didn't -- what's his  
22 first name?

23          A.       Dick Barker.

24          Q.       What's his current position?

25          A.       CFO.

1 A. When was that date?

2 Q. February 2, 2016.

3 A. Okay.

4 Q. And for ease of this conversation, prior  
5 to January of '16, prior to January 1, 2016, are you  
6 aware of any performance problems by Chief Schmitt?

7 A. Performance problems?

8 Q. Yes. Any performance problems by Chief  
9 Schmitt?

10 A. Not that I recall.

11 Q. Are you aware -- do you recall any sort  
12 of disciplines or reprimands issued to Chief Schmitt?

13 A. Not that I recall.

14 Q. What about Chief Glover, are you aware  
15 of any performance problems towards Chief Glover?

16 A. No.

17 Q. And so I assume you're not aware of any  
18 sort of discipline or reprimands towards Chief Glover  
19 either?

20 A. No.

21 Q. You're aware, I assume, that Chief  
22 Glover and several others have filed a lawsuit against  
23 the City of Pensacola alleging race discrimination?

24 MR. LARKIN: Object to the form.

25 Q. (By Mr. Calamusa) You can --

1 MR. LARKIN: You can answer.

2 A. Can you ask the question again?

3 Q. Yes, sir. You're aware, are you not,  
4 that Chief Glover, along with several other  
5 African-American firefighters, filed a lawsuit against  
6 the City of Pensacola alleging race discrimination?

7 A. Yes.

8 Q. And that was filed prior to your  
9 election?

10 A. Yes, I believe.

11 Q. But it was pending during your tenure as  
12 mayor?

13 A. I don't recall.

14 Q. You don't recall if it was ongoing  
15 during the time you were mayor?

16 A. I don't remember.

17 Q. But you do know and recall that they --  
18 Chief Glover along with others sued the city for race  
19 discrimination, right?

20 A. Yes.

21 Q. And you're aware that Chief Glover filed  
22 an EEOC charge against the city in December of 2015,  
23 correct?

24 A. I'd heard that.

25 Q. How did you become aware?

1           A.       I think Eric Olson, maybe.

2           Q.       And what do you recall?

3           A.       That they told me that, and that was it.

4           Q.       What did they tell you, and who is the  
5    "they"?

6           A.       Well, Eric Olson told me that, and I  
7    assume that Ed told Eric and Eric told me, and I'm  
8    sure I said, "That's unfortunate" and kept walking.

9           Q.       Did you have any discussions with  
10   Mr. Sisson -- and that's the Ed in the sentence you  
11   gave -- about it?

12          A.       Not that I recall.

13          Q.       Did you -- did you decide that the  
14   city -- as to who the city would hire? Do you have to  
15   approve the city lawyers?

16          A.       No.

17          Q.       Who does that?

18          A.       The city attorney.

19          Q.       And you're aware that Mr. Larkin and his  
20   firm was hired to represent the city in relation to  
21   Mr. Glover's December 2015 EEOC charge, right?

22          A.       I assume, yeah.

23          Q.       Mr. Larkin and his firm have handled  
24   other matters for the city prior to the December 15,  
25   2015, charge, right?



1 Q. But you were briefed on them?

2 A. Yeah.

3 Q. And you knew that they were alleging  
4 conduct against Mr. Sisson and Mr. Olson, fair enough?

5 A. Yes.

6 Q. Now, after the charges were filed and  
7 received by the city, Mr. Schmitt and Glover were  
8 placed on leave, correct?

9 MR. LARKIN: Object to the form.

10 A. I don't remember.

11 Q. (By Mr. Calamusa) Do you remember them  
12 being placed on leave?

13 A. They were placed on leave.

14 Q. Okay. And do you remember the date they  
15 were placed on leave?

16 A. No.

17 Q. If I were to tell you they were placed  
18 on leave on February 2, 2016, does that sound  
19 familiar?

20 A. Around that time, yeah.

21 Q. So the EEOC charges were filed in  
22 December of 2015. We've already established that,  
23 right?

24 A. I guess.

25 Q. So after the EEOC charges were filed and

1           Q.       Did you have any conversations with  
2   Mr. Sisson about the substance of either of these  
3   gentlemen's EEOC charges?

4           A.       No.

5           Q.       Do you recall having conversations with  
6   anyone about the substance of these EEOC charges?

7           A.       Not about the substance. I know that,  
8   you know, I was told by Eric they were filed.

9           Q.       Anything else?

10          A.       I'm sure I said it was unfortunate, and  
11   that was it. I didn't get into the substance.

12          Q.       Did you ever follow back up with --  
13   or -- with anything about the charges?

14          A.       No. I'm briefed when we have our  
15   management meetings and things in the city.

16          Q.       So you would have been briefed at times  
17   about the charges?

18          A.       Possibly.

19          Q.       Who would have briefed you?

20          A.       Eric.

21          Q.       Okay. And do you recall him briefing  
22   you on these charges?

23          A.       I don't recall, but I'm sure they  
24   were -- in the meetings that we had, giving me an  
25   update, I guess.

1           Q.       How often do you have -- what did you  
2   call them, management meetings? I'm not sure if  
3   that's what you called it.

4           A.       Yeah. We try to get together on  
5   Tuesdays.

6           Q.       And who is present each Tuesday in these  
7   management meetings?

8           A.       The city attorney, city administrator,  
9   assistant city administrator, and Dick Barker, our  
10   CFO.

11          Q.       What is the city's process upon receipt  
12   of the EEOC charges?

13          A.       I don't know.

14          Q.       Who handles all of that?

15          A.       HR. I would...

16          Q.       When the charges were filed, and then  
17   subsequent to that, were you made aware that both of  
18   these gentlemen made allegations against Mr. Sisson  
19   and Mr. Olson?

20          A.       Yeah.

21          Q.       Tell me what you know about Mr. Glover's  
22   charge. What was it about?

23          A.       I can't recall.

24          Q.       What about Mr. Schmitt's charge?

25          A.       I can't recall.

1 Q. But you were briefed on them?

2 A. Yeah.

3 Q. And you knew that they were alleging  
4 conduct against Mr. Sisson and Mr. Olson, fair enough?

5 A. Yes.

6 Q. Now, after the charges were filed and  
7 received by the city, Mr. Schmitt and Glover were  
8 placed on leave, correct?

9 MR. LARKIN: Object to the form.

10 A. I don't remember.

11 Q. (By Mr. Calamusa) Do you remember them  
12 being placed on leave?

13 A. They were placed on leave.

14 Q. Okay. And do you remember the date they  
15 were placed on leave?

16 A. No.

17 Q. If I were to tell you they were placed  
18 on leave on February 2, 2016, does that sound  
19 familiar?

20 A. Around that time, yeah.

21 Q. So the EEOC charges were filed in  
22 December of 2015. We've already established that,  
23 right?

24 A. I guess.

25 Q. So after the EEOC charges were filed and

1 leave?

2 A. I assume he was briefed.

3 Q. And did he agree with the decision?

4 A. Yes.

5 Q. And was he involved in making the  
6 decision? Was it discussed with him as to whether or  
7 not the two should be placed on leave?

8 A. I assume.

9 Q. And what about Mr. Sisson --

10 MR. LARKIN: Don't assume. Just answer  
11 what you know. Okay?

12 Q. (By Mr. Calamusa) What about Mr. Sisson?  
13 Was he involved in any discussions with --

14 A. I don't recall.

15 Q. You don't recall him ever being present  
16 in any meetings in which this was discussed?

17 A. I can't -- I don't remember. I mean,  
18 with me or with who?

19 Q. With you. That you're in a meeting,  
20 he's there, it was discussed placing them on leave?

21 A. I don't recall if Ed was there.

22 Q. Do you know if Mr. Sisson was briefed on  
23 the matter by Mr. Olson?

24 A. I don't know.

25 Q. Or Mr. Larkin?

1 A. I would say yes.

2 Q. Were you present?

3 A. With who?

4 Q. When Mr. Sisson was briefed on whether  
5 or not these two gentlemen should be placed on leave  
6 and the decision to place them on leave?

7 A. Briefed by who?

8 Q. Anyone.

9 A. I was --

10 Q. That Ed Sisson was present, whether  
11 Sisson was present?

12 A. I don't recall with Ed.

13 Q. Tell me what you recall with Mr. Olson.

14 A. Well, I just -- I remember just being  
15 briefed by Mr. Larkin.

16 Q. When was that?

17 A. I can't -- in February is what you're  
18 telling me.

19 Q. Well, February is when they went on  
20 leave. That was not my question. My question was --

21 A. I don't recall what day it was.

22 Q. How long was it before February 2nd?

23 A. I don't recall.

24 Q. Who was present?

25 A. I recall Eric and I having a

1 conversation.

2 Q. And tell me about the conversation.

3 A. To my knowledge they recommended they go  
4 on leave.

5 Q. And why were they recommended they go on  
6 leave?

7 A. It was our -- from counsel they  
8 recommended them going on leave.

9 Q. And Mr. Larkin was counsel handling the  
10 EEOC charges, right?

11 A. I believe.

12 Q. And can you tell me any other reasons  
13 why it was recommended they go on leave to you in this  
14 meeting?

15 A. Well, I was briefed on the meeting  
16 basically on things that were supposedly going on in  
17 the fire department, and they recommended to me that  
18 these guys need to go on leave --

19 Q. When was that meeting?

20 A. I don't recall.

21 Q. That was a -- a separate meeting  
22 than the ones about the EEOC charges, weren't they?

23 A. I can't recall.

24 Q. Whose decision was it to investigate  
25 Mr. Glover?

1     briefed me.

2             Q.       So Eric and -- who is the city  
3     administrator?

4             A.       (Nods head.)

5             Q.       And who allegations of wrongdoing, as  
6     far as EEOC complaints, had been made against him,  
7     right? At this time, right?

8             A.       Yes.

9             Q.       Along with Mr. Larkin, who was  
10    representing the city in the EEOC matters, right?

11            A.       Yes.

12            Q.       The two of them. Do you recall anyone  
13    else discussing any other problems or the need to  
14    investigate Mr. Schmitt or Mr. Glover?

15            A.       No, I mean, that's what I remember in  
16    the conversation.

17            Q.       And I want you to think about Mr. Sisson  
18    because it's my understanding from reading  
19    Russell Van Sickle's notes and other documents that  
20    Mr. Sisson was present.

21            A.       Uh-huh.

22            Q.       So do you recall whether or not Sisson  
23    was present?

24            A.       I don't recall. He could have been. I  
25    don't recall.



1           Q.       Being that this was HR matters,  
2     personnel matters, would it make sense to you that he  
3     be there?

4                   MR. LARKIN: Object to the form.

5           A.       Yes.

6           Q.       (By Mr. Calamusa) But sitting here you  
7     don't recall. So I take it you don't recall if he  
8     gave any input as to any of these issues, things, that  
9     were not good in the fire department?

10          A.       I recall walking in. It was like the  
11     people that I recall and it was -- I didn't stay there  
12     for the whole meeting, and I remember walking in, and  
13     I remember walking out fairly quickly.

14          Q.       Prior to -- and let me give you a date  
15     and see if this helps. It's my understanding this  
16     meeting took place January 29, 2016.

17          A.       No. I'm sure it was cold and ugly out.

18          Q.       Prior to this meeting, had you ever been  
19     briefed or told about any sort of mismanagement or  
20     performance problems at the fire department by Chief  
21     Schmitt?

22          A.       Had he told me personally?

23          Q.       No. Has anyone told you? Because I'd  
24     already asked you earlier were you aware of any  
25     problems by Chief Schmitt at the fire department and

1     you said no. So I just want to -- you come to this  
2     meeting January 29th. Prior to this meeting on  
3     January 29, 2016, had you ever been alerted to any  
4     problems of the fire department on the part of Chief  
5     Schmitt?

6             A.       No.

7             Q.       Had you ever been alerted to any  
8     performance problems, mismanagement, unprofessional  
9     conduct by Chief Schmitt?

10            A.       No.

11            Q.       What about by Chief Glover, prior to  
12    walking into this meeting, same questions?

13            A.       No.

14            Q.       And it was told to you at the time  
15    that -- that they recommended they -- and the only two  
16    people you remember speaking to at the time was Eric  
17    and Rob, that they recommended an outside counsel  
18    investigate --

19            A.       Yes.

20            Q.       -- correct?

21            A.       Yes, sir.

22            Q.       Do you recall why they recommended  
23    outside counsel?

24            A.       There was retaliation against a  
25    subordinate by Mr. Glover is what they told me and --

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1 has for many, many years?

2 A. Yes.

3 Q. So he's brought into this meeting where  
4 it's discussed -- the need to investigate these two  
5 gentlemen, correct?

6 A. Yes.

7 Q. Did you agree at that time to hire  
8 Mr. Van Sickle to investigate them, or had that  
9 already been done by Mr. Olson?

10 A. No. I didn't have anything to do with  
11 it. I don't -- Russell was there.

12 Q. And you don't have any idea how Russell  
13 ended up there?

14 A. No.

15 Q. Why was Mr. Wells present? Did you tell  
16 me -- yeah, you did. You told me Rusty Wells was  
17 present.

18 A. Rusty was there.

19 Q. Why was he present?

20 A. Rusty is a lawyer. He has been with the  
21 city a long time. I guess someone that was in the  
22 meeting asked him to come to the meeting.

23 Q. And you have no knowledge as to who  
24 called the meeting?

25 A. No.

1           A.       No. The city has -- I -- we have a  
2     calendar, my calendar. I guess it's the mayor's  
3     calendar.

4           Q.       You don't dispute -- you agree that  
5     Mr. Van Sickle has provided legal advice on employment  
6     matters to you and the city, right, prior to this  
7     investigation?

8           A.       I assume if you're telling me. I don't  
9     recall.

10          Q.       Are you aware that Mr. Van Sickle  
11     conducted an investigation?

12          A.       Yes.

13          Q.       Into some allegations against Chief  
14     Schmitt and Chief Glover?

15          A.       Yes.

16          Q.       What was your involvement in the  
17     investigation?

18          A.       Just that I okayed it that day in the  
19     meeting. They told me about it and I had to okay it.

20          Q.       And then what?

21          A.       Then Mr. Van Sickle did his  
22     investigation.

23          Q.       Yes, sir. And what was your involvement  
24     with Mr. Van Sickle in the investigation?

25          A.       Nothing. He --

1           A.       I heard he did.

2           Q.       And did you ever listen to the contents  
3 of the interview or read a transcript of it?

4           A.       I don't recall.

5           Q.       Where did you hear that he had done so?

6           A.       I believe Eric.

7           Q.       And what did Mr. Olson tell you about  
8 the interview?

9           A.       That he did a radio interview.

10          Q.       Did he tell you the substance of it?

11          A.       I don't recall.

12          Q.       So that I'm clear, Mr. Olson was in the  
13 meeting January 29th of 2016 when -- and he led the  
14 discussions, him and Mr. Larkin, of the need to  
15 investigate the two individuals, Glover and Schmitt?

16                   MR. LARKIN: Object to the form.

17          A.       Correct.

18          Q.       (By Mr. Calamusa) And Mr. Olson was  
19 involved in the decision to hire Mr. Van Sickle?

20                   MR. LARKIN: Object to the form.

21          A.       Can you ask that again?

22          Q.       (By Mr. Calamusa) Mr. Olson was involved  
23 in the decision to hire Mr. Van Sickle to conduct this  
24 investigation?

25          A.       Yes.

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1           Q.       Mr. Olson was aware of the EEOC charges  
2   when they were filed because he was the one that told  
3   you, right?

4           A.       Yes.

5           Q.       And to your knowledge Mr. Olson was  
6   aware and had discussions prior to this January 29th  
7   meeting of the need to investigate Mr. Schmitt and  
8   Mr. Glover?

9           A.       I don't recall that.

10          Q.       During the radio interview, I assume  
11   you've been made aware that Mr. Olson stated that he  
12   received the EEOC charges, correct?

13          A.       (Nods head.)

14          Q.       That he notified the insurance carrier  
15   and that, through the insurance carrier, the city  
16   hired Allen, Norton & Blue, which is Mr. Larkin and  
17   his firm, right?

18                   MR. LARKIN: Object to the form.

19          Q.       (By Mr. Calamusa) Are you aware of  
20   Mr. Olson saying that?

21          A.       No.

22          Q.       I'm back to: Did you ever hear the  
23   interview -- I forgot your question. I was thinking  
24   something --

25          A.       I don't recall.

1                   And he said, "I did an interview on  
2   1620," I believe it was.

3                   I said, "How was it?"

4                   "Oh, it was fine."

5           Q.       Anything else?

6           A.       No.

7           Q.       After the interview came out, did you  
8   have a -- did you ever hear anything about it, have  
9   any problems with it?

10          A.       I think I heard that he was on the radio  
11   and talked about complaints that he got and -- I do a  
12   show. Eric is not on the radio all the time and so...

13          Q.       The allegations that -- well, let me say  
14   that the EEOC charges that Chief Schmitt and Chief  
15   Glover filed, what, if any, investigation was  
16   conducted into those charges?

17          A.       I don't recall.

18          Q.       You have already told me that you were  
19   aware that the EEOC charges and the allegations in  
20   them allege conduct by Sisson and Olson, right?

21          A.       I think you told me that.

22          Q.       And you agree that you knew that the  
23   EEOC charges made by these two gentlemen, Mr. Glover  
24   and Mr. Schmitt, made allegations against Sisson and  
25   Olson, right?

1           A.       Yes.

2           Q.       Can you tell me why Mr. Olson and  
3 Mr. Sisson were not placed on leave pending an  
4 investigation into the EEOC charges?

5           A.       No.

6           Q.       Did anybody ever recommend to you that  
7 since they were the subject of EEOC charges that they  
8 be placed on leave so "we can investigate the  
9 charges"?

10          A.       No.

11          Q.       And you're not aware of any  
12 investigation into the charges themselves?

13          A.       No.

14          Q.       No one ever briefed you on any  
15 investigations?

16          A.       Not that I recall.

17          Q.       You told me earlier that your  
18 recollection of the January 29th meeting is you were  
19 told things were not good in the fire department,  
20 unprofessional, complaints by a subordinate employee  
21 not handled, and that there was mismanagement. Do you  
22 recall telling me that?

23          A.       Yes.

24          Q.       Anything else specifically that you know  
25 of or were told regarding what the allegations were



1           A.       I have no idea.

2                   MR. LARKIN: Same objection.

3           Q.       (By Mr. Calamusa) And you never asked?

4           A.       No.

5           Q.       Let's talk about --

6                   MR. CALAMUSA: Yeah, let's get your

7           water. I apologize.

8                   MR. LARKIN: Let's take a five-minute

9           break.

10                  MR. CALAMUSA: Okay.

11                   (Break in proceedings.)

12           Q.       (By Mr. Calamusa) Mister...

13                   You mentioned that you looked at some  
14 documents to prepare, and one of the documents was the  
15 termination letter. Do you recall that?

16           A.       Yes, sir.

17           Q.       My understanding is that Deputy Chief  
18 Glover was terminated through a letter from you dated  
19 May 10, 2016. Does that sound right?

20           A.       Yes, sir.

21           Q.       And that Chief Schmitt was terminated by  
22 you through a letter from you also dated May 10, 2016,  
23 correct?

24           A.       Yes, sir.

25           Q.       Did you meet with either of these

1 individuals to discuss the allegations, the report,  
2 the findings, or your decision to terminate? Roll it  
3 all into one to speed it up.

4 A. No, sir.

5 Q. Who made the decision to terminate  
6 Glover's employment?

7 A. I did.

8 Q. And who made the decision to terminate  
9 Mr. Schmitt's employment?

10 A. I did.

11 Q. And who else was involved in the  
12 decisions?

13 MR. LARKIN: Object to the form.

14 A. It was recommended to me after the  
15 report.

16 Q. (By Mr. Calamusa) Who recommended it to  
17 you?

18 A. Eric, Rob.

19 Q. Anybody else?

20 A. I don't remember.

21 Q. What about Sisson, was he involved in  
22 the discussions?

23 A. I don't remember.

24 Q. Was it in a meeting that you all had  
25 together? And I'll say "together" -- you, Rob, and

1 Eric -- or was it a meeting, one with Rob, one with  
2 Eric?

3 A. I don't remember.

4 Q. So the recommendation was made to  
5 terminate. Did you consult with anyone else other  
6 than those two?

7 A. No, sir.

8 Q. Did you consult with Mr. Van Sickle at  
9 all?

10 A. I don't remember.

11 Q. Upon receiving his report, did you have  
12 any discussions with Mr. Van Sickle about the  
13 substance of his report or his findings?

14 A. I don't remember.

15 Q. Did you seek any advice from Mr. Van  
16 Sickle as to his report or recommendations or what you  
17 should do?

18 A. I don't remember.

19 Q. Do you know when the decision was made?

20 A. I don't recall.

21 Q. Do you know when the recommendation was  
22 made to terminate?

23 A. I don't recall.

24 Q. Was the decision made to terminate --  
25 well, the letters of termination were issued May 10,

1           Q.       Can you give me the reason for  
2     terminating Mr. Glover after 27 years with the  
3     department?

4           A.       The findings in the report.

5           Q.       Can you tell me which findings in the  
6     report?

7           A.       It's been awhile since I read the  
8     report. I can't remember exactly what's in there.

9           Q.       You would agree with me that Mr. Van  
10    Sickle investigated a number of issues that were  
11    alleged by Mr. Sisson, right?

12                   MR. LARKIN: Object to the form.

13          A.       I know Mr. Van Sickle did an  
14    investigation.

15          Q.       (By Mr. Calamusa) Yes, sir. And you --  
16    do you agree with me that the allegations that were in  
17    the February 11, 2016, letter, that many of those  
18    allegations were deemed to be unfounded?

19                   MR. LARKIN: Object to the form.

20          Q.       (By Mr. Calamusa) Look at Exhibit 1.

21                   Well, do you know that -- I'm sorry. He  
22    objected and you didn't answer.

23                   That many of those allegations set forth  
24    in Exhibits 1 and 2 were found by Mr. Van Sickle to be  
25    unfounded?

1 MR. LARKIN: Just for the record, it was  
2 almost two years ago.

3 MR. CALAMUSA: About a year and a half.  
4 We're close. I'll split the difference with  
5 you.

6 MR. LARKIN: All right. Fair enough.

7 Q. (By Mr. Calamusa) Take a look at that  
8 allegation.

9 We might as well try it this way,  
10 Mr. Mayor.

11 Who -- let me ask you this: Who, within  
12 the fire department, is responsible for hiring?

13 A. Who is responsible for hiring fire  
14 department? I think it's a collaboration between the  
15 chief and his team and HR.

16 Q. And who is ultimately responsible to --  
17 for the hiring process within the department?

18 A. I don't recall.

19 Q. Is it your interim Deputy Chief Glover?  
20 Is he ultimately responsible for the hiring process?

21 A. They are responsible for hiring people.  
22 They have a part in it.

23 Q. And who is ultimately responsible? Is  
24 it Schmitt? Is it Glover? Is it your battalion  
25 chiefs? Is it Jester? Is it -- going down the line.

1           A.       I don't recall.

2           Q.       So you don't even know who is  
3 responsible for the hiring process in the department?

4                   MR. LARKIN: Object to the form.

5           A.       I believe that -- the chief, the deputy  
6 chief -- it's a team -- and HR.

7           Q.       (By Mr. Calamusa) What's the deputy  
8 chief's role in the hiring process?

9           A.       I don't know.

10          Q.       Then how can you say he's part of it if  
11 you don't know?

12          A.       I assume that.

13          Q.       So you're assuming. You don't have any  
14 idea who is responsible for the hiring process in the  
15 fire department, do you?

16          A.       I believe it's the chief, the deputy  
17 chief, and it's a collaboration.

18          Q.       What is the deputy chief's role?

19          A.       In the hiring practice?

20          Q.       Yes.

21          A.       I assume that he would interview people  
22 with the chief.

23          Q.       Anything else?

24          A.       No, sir.

25          Q.       Are you aware of the deputy chief being

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1 responsible for any other phase of the hiring process?

2 A. No, sir.

3 Q. Why did you -- did you terminate  
4 Mr. Glover for attempting to conduct a hiring process  
5 for new firefighters in a manner contrary to  
6 established protocol?

7 A. I don't recall.

8 Q. What is the established protocol?

9 A. I don't know.

10 Q. Then how can you make a decision as to  
11 whether or not to terminate them for violating such --

12 MR. LARKIN: Object to the form.

13 Q. (By Mr. Calamusa) -- if you don't know  
14 the process?

15 MR. LARKIN: Same objection.

16 A. I don't recall.

17 Q. (By Mr. Calamusa) Do you know if the  
18 hiring protocols are written anywhere?

19 A. I don't recall.

20 Q. Do you know anything about the hiring  
21 protocol, which they allege -- which was alleged that  
22 they attempted to hire in a manner contrary to?

23 A. I don't recall.

24 Q. Under this it says here, "Failing to  
25 notify HR of the date of the physical abilities test."

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1 MR. LARKIN: Object to the form.

2 A. No, sir.

3 Q. (By Mr. Calamusa) Was anyone in HR  
4 disciplined, reprimanded, placed on leave, suspended,  
5 demoted, terminated for failing to follow policy?

6 A. I don't recall.

7 Q. Why were these gentlemen terminated  
8 then --

9 MR. LARKIN: Object to the form.

10 Q. (By Mr. Calamusa) -- if HR wasn't and if  
11 Mr. Jester wasn't disciplined for his violations?

12 MR. LARKIN: Same objection.

13 A. I don't recall.

14 Q. (By Mr. Calamusa) Do you know a  
15 department head named Brian Cooper?

16 A. Yes.

17 Q. Are you aware of any investigation into  
18 Mr. Cooper's hiring practices?

19 A. I don't recall.

20 Q. Can you tell me why Mr. Cooper was not  
21 terminated for violating hiring practices, proper  
22 protocol and procedures?

23 A. I don't recall.

24 Q. Are you aware that Mr. Cooper violated  
25 proper protocol and hiring procedures on two separate



1 occasions?

2 A. I don't recall.

3 Q. Are you aware that Mr. Cooper was given  
4 a verbal warning on one occasion regarding violating  
5 proper protocol and procedure?

6 A. I don't recall.

7 Q. Why was Mr. Schmitt or Mr. Glover not  
8 given a verbal reprimand for violating protocol  
9 similar to Mr. Cooper?

10 A. I don't recall.

11 MR. LARKIN: Object to the form.

12 Q. (By Mr. Calamusa) Why was Mr. Cooper --  
13 the second time Mr. Cooper violated proper protocol  
14 and procedure, was he given a written reprimand?

15 A. I don't recall.

16 Q. Can you tell me why Mr. Cooper was given  
17 a written reprimand for violating proper protocol and  
18 procedure regarding hiring when he violated a second  
19 time and he was not fired?

20 A. I don't recall.

21 Q. Can you tell me why Chief Schmitt and  
22 Chief Glover, whom you've already told me you had no  
23 problems with prior to the filing of their EEOC  
24 charges --

25 MR. LARKIN: Object to the form.

1           A.       I don't remember.

2           Q.       (By Mr. Calamusa) Did you terminate  
3 Deputy Chief Glover for demoting and reducing the pay  
4 of Deas?

5                   MR. LARKIN: Same objection.

6           A.       I don't remember.

7           Q.       (By Mr. Calamusa) Did you demote -- I'm  
8 sorry. Did you terminate Glover for attempting to  
9 coerce or intimidate a subordinate firefighter into  
10 writing a letter for the Pensacola United Firefighters  
11 Association in July of 2015?

12                   MR. LARKIN: Object to the form.

13          A.       I don't remember.

14          Q.       (By Mr. Calamusa) Do you know the  
15 findings as to either of these allegations?

16          A.       I don't remember.

17          Q.       Let's -- let me ask you this, Mayor: Do  
18 you agree that -- Deas was never demoted and never  
19 lost any pay, was he?

20                   MR. LARKIN: Object to the form.

21          A.       I don't recall.

22          Q.       (By Mr. Calamusa) Sir, you made a  
23 decision to terminate. Was this one of the issues?

24          A.       I don't recall. It could be in the  
25 report. I don't recall.

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1 Q. There is a lot of stuff in the report.

2 A. I --

3 Q. Stuff that exonerates them.

4 A. I haven't read that report in a long  
5 time. Rocco, I haven't read it in a long time.

6 Q. I understand, but you made a decision to  
7 terminate two long-term employees, and I'm trying to  
8 find out why --

9 MR. LARKIN: Object to the form.

10 Q. (By Mr. Calamusa) -- what the specifics  
11 were that led to your decision.

12 MR. LARKIN: Same objection.

13 Q. (By Mr. Calamusa) And sitting here  
14 today, you tell me you don't remember one way or the  
15 other whether any of this Deas -- D-E-A-S -- any of  
16 this Deas mess mattered?

17 MR. LARKIN: Object to the form.

18 A. The Deas report was -- I read the  
19 report. I don't remember what was in the report. I  
20 know Deas was a part of this, you know.

21 Q. (By Mr. Calamusa) Was that one of the  
22 reasons you terminated him? For demoting or reducing  
23 the pay of Deas?

24 MR. LARKIN: Object to the form.

25 A. I don't recall.

1           Q.       Well, Mr. Van Sickle found that the  
2       issuance of the written reprimand to Deas was  
3       retaliatory. Do you recall that?

4           A.       I don't recall.

5           Q.       Did you terminate either one of these  
6       individuals, Glover or Schmitt, for retaliating  
7       against Mr. Deas?

8           A.       I don't recall was what in the report.  
9       I haven't read it in two years.

10          Q.       Did you terminate them for retaliating  
11       against Mr. Deas?

12                 MR. LARKIN: Object to the form. Asked  
13       and answered.

14          Q.       (By Mr. Calamusa) Yes or no.

15                 MR. LARKIN: Object to the form. Asked  
16       and answered.

17          Q.       (By Mr. Calamusa) Go ahead.

18                 MR. LARKIN: He already answered.

19                 MR. CALAMUSA: I'm going to ask him one  
20       more time and then we'll move on.

21          Q.       (By Mr. Calamusa) Did you terminate  
22       Mr. Schmitt --

23                 MR. CALAMUSA: And I'm going to take it  
24       separately just because we've got separate  
25       cases.

1 MR. LARKIN: You can combine them. He's  
2 already answered it.

3 Q. (By Mr. Calamusa) Did you terminate  
4 Mr. Schmitt and Mr. Glover for retaliating against  
5 Deas?

6 A. I don't recall.

7 Q. Did you discipline Mr. Olson for  
8 retaliating against Mr. Deas?

9 MR. LARKIN: Object to the form.

10 A. We don't retaliate.

11 Q. (By Mr. Calamusa) Mr. Van Sickle, did  
12 you -- are you aware that Mr. Van Sickle found that  
13 the written reprimand --

14 A. If it was in the report, it was in the  
15 report.

16 Q. So if it was in the report that issuing  
17 this written reprimand was retaliation, did you take  
18 action based on that finding?

19 MR. LARKIN: Object to the form. Asked  
20 and answered.

21 A. Can you...

22 Q. (By Mr. Calamusa) Yes, sir. Did you  
23 take action based on Mr. Van Sickle's finding that the  
24 issuance of the written reprimand was retaliatory?

25 MR. LARKIN: Objection. Asked and

1           answered.

2           A.       I don't recall.

3           Q.       (By Mr. Calamusa) And sitting here, you  
4   don't recall, but it's -- the fact is, you never  
5   counseled or disciplined Sisson or Olson for their  
6   involvement in the Deas matter?

7           A.       I don't recall.

8           Q.       So you might have?

9                   MR. LARKIN: Object to the form.

10          A.       I don't recall.

11          Q.       (By Mr. Calamusa) Issue No. 3 in both  
12   letters are the same. Did you terminate Chief Schmitt  
13   for failing to address in a timely manner the  
14   battalion chief pay raise requests in the latter half  
15   of 2015 and into 2016?

16          A.       I don't recall.

17          Q.       Did you terminate chief -- Deputy Chief  
18   Glover for failing to address in a timely manner the  
19   battalion chief pay raise requests in the latter half  
20   of '15 and '16?

21          A.       I don't recall.

22          Q.       When did you learn of this allegation?

23          A.       I don't remember.

24          Q.       Who told you of this allegation?

25                   MR. LARKIN: Object to the form.

1 A. I don't recall.

2 Q. (By Mr. Calamusa) Did you discipline  
3 Mr. Olson for his conduct related to the battalion  
4 chief pay raises?

5 A. I don't recall.

6 Q. Did you discipline Mr. Olson -- I'm  
7 sorry -- Mr. Sisson for his conduct related to the  
8 battalion chief pay raises?

9 A. I don't recall.

10 Q. What would help refresh your  
11 recollection about any of this, I'm saying?

12 MR. LARKIN: Object to the form. Asked  
13 and answered.

14 A. I don't know.

15 Q. (By Mr. Calamusa) Is there anything  
16 there that would help you determine whether or not you  
17 disciplined Olson or Sisson for the battalion chief  
18 raises or for the Deas matter?

19 A. I don't know.

20 Q. Well, I've been given their files, and  
21 there is no discipline in their files regarding any of  
22 this. Is that the best place to look as to whether or  
23 not there would be discipline?

24 MR. LARKIN: Object to the form.

25 A. I don't know.

1 A. I don't recall.

2 Q. (By Mr. Calamusa) Was Olson reprimanded  
3 for failing to notify Schmitt of the amount of money  
4 allocated when he notified the other department heads?

5 A. I don't recall.

6 Q. Did you recall that Van Sickle's finding  
7 was that Schmitt and Glover were not at fault here,  
8 that there was blame to go around?

9 MR. LARKIN: Object to the form.

10 A. I don't recall.

11 Q. (By Mr. Calamusa) And you don't recall  
12 whether or not this was even a ground that you used to  
13 terminate them?

14 A. I don't recall.

15 Q. Look at Exhibit 2.

16 Looking at Exhibit 2, which is Glover's  
17 February 11, 2016, letter -- I'm looking at issue  
18 No. 4. Did you terminate Mr. Glover for mismanagement  
19 of the fire apprenticeship program and rental of a  
20 BMW 5 series vehicle?

21 A. I don't recall.

22 Q. Do you recall what the findings were in  
23 regards to this issue?

24 A. No, sir.

25 Q. Do you recall that the findings were



1     there was no wrongdoing on the part of Glover as to  
2     any of this?

3                     MR. LARKIN: Object to the form.

4             A.       I don't recall.

5             Q.       (By Mr. Calamusa) If there was no  
6     wrongdoing, did you terminate him for this reason?

7                     MR. LARKIN: Object to the form.

8             A.       I don't recall.

9             Q.       (By Mr. Calamusa) So you might have?

10                    MR. LARKIN: Same objection.

11            Q.       (By Mr. Calamusa) Right? You just don't  
12   remember?

13                    MR. LARKIN: Same objection.

14            A.       No, sir.

15            Q.       (By Mr. Calamusa) Do you know when these  
16   allegations of -- well, it says right here 2015,  
17   doesn't it, in issue 4?

18            A.       Yes, sir.

19            Q.       Can you tell me why none of the alleged  
20   allegations, which were found to be untrue, were  
21   investigated since they took place in 2015?

22            A.       No, sir.

23                    MR. LARKIN: Object to the form.

24            Q.       (By Mr. Calamusa) Can you tell me why it  
25   was that those investigations did not take place until

1 after the gentlemen's -- both Schmitt and Glover filed  
2 their EEOC charges?

3 MR. LARKIN: Object to the form.

4 A. No, sir.

5 Q. (By Mr. Calamusa) Looking at issue 5,  
6 did you terminate Mr. Glover for comments made during  
7 a firefighters annual awards ceremony?

8 A. I don't recall.

9 Q. Do you recall that the finding was no  
10 wrongdoing -- there was no wrongdoing on the part of  
11 Mr. Glover, that he did not mention the HR department  
12 or Sisson?

13 A. I don't recall.

14 Q. Do you know when this incident took  
15 place?

16 A. No, sir.

17 Q. But -- and you can't tell me if this was  
18 one of the reasons you fired him?

19 A. No, sir. No. 5?

20 Q. Yeah.

21 A. No.

22 Q. Now, let's go back to Brian Cooper. Are  
23 you aware of some derogatory comments Mr. Cooper made  
24 about you?

25 A. No, sir.

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1 Q. You have no knowledge of this?

2 A. No.

3 Q. Are you aware that he was given a  
4 written reprimand as part of a second violation of  
5 hiring protocol and included insubordination regarding  
6 derogatory comments he made in public about you?

7 A. No.

8 Q. Can you tell me why he wasn't  
9 terminated?

10 MR. LARKIN: Object to the form.

11 A. I don't recall. I don't know about  
12 that.

13 Q. (By Mr. Calamusa) Issue No. 6, there is  
14 an allegation that Glover unreasonably resisted a drug  
15 test request on January 20, 2016. Do you know the  
16 substance of that?

17 A. No, sir.

18 Q. Was that one of the reasons you  
19 terminated him?

20 A. I don't recall.

21 Q. So it could be; you just don't remember?

22 MR. LARKIN: Object to the form.

23 A. I don't recall.

24 Q. (By Mr. Calamusa) And No. 5, issue 5 for  
25 Glover, could be a reason for termination, you just

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1 don't remember?

2 MR. LARKIN: Same objection.

3 A. I don't recall.

4 Q. (By Mr. Calamusa) Issue 4 could be a  
5 reason for termination, you just don't remember?

6 MR. LARKIN: Same objection.

7 A. I don't recall.

8 Q. (By Mr. Calamusa) Issue 3 could be a  
9 reason for termination, you just don't remember?

10 MR. LARKIN: Same objection.

11 A. I don't recall.

12 Q. (By Mr. Calamusa) Issue 2 could be a  
13 reason, you just don't remember?

14 MR. LARKIN: Same objection.

15 A. I don't recall.

16 Q. (By Mr. Calamusa) Issue 1 could be a  
17 reason for termination, you just don't remember?

18 MR. LARKIN: Same objection.

19 A. I don't recall.

20 Q. (By Mr. Calamusa) And as to Schmitt's  
21 letter, issue 1 could be a reason for termination, you  
22 just don't recall?

23 A. I don't recall.

24 MR. LARKIN: Same objection.

25 Q. (By Mr. Calamusa) Issue 2 could be, you

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1 just don't recall?

2 A. Right.

3 Q. And Issue 3, even though it was  
4 unfounded, could be, you just don't recall?

5 MR. LARKIN: Object to the form.

6 A. I don't recall.

7 Q. (By Mr. Calamusa) Going back to Glover,  
8 issue 3, even though it was unfounded, could have been  
9 a reason --

10 MR. LARKIN: Same objection --

11 Q. (By Mr. Calamusa) -- correct? You don't  
12 recall?

13 A. I don't recall.

14 Q. Issue 4, even though it was unfounded,  
15 could have been a reason?

16 MR. LARKIN: Same objection. Asked and  
17 answered.

18 A. I don't recall.

19 Q. (By Mr. Calamusa) Issue 5, even though  
20 unfounded, could be a reason?

21 MR. LARKIN: Object to the form.

22 A. I don't recall.

23 Q. (By Mr. Calamusa) Issue 6, even though  
24 unfounded, could be a reason?

25 MR. LARKIN: Object to the form.

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CERTIFICATE OF OATH

STATE OF FLORIDA

COUNTY OF SANTA ROSA

I, the undersigned authority, certify that

ASHTON JAMES HAYWARD appeared before me and was duly

sworn.

WITNESS my hand and official seal this 2nd day

of January, 2018.

MARY ELLEN THURSBY, RPR

Notary Public, State of Florida

My Commission No: #GG 142026

Expires October 4, 2021

CERTIFICATE OF REPORTER

STATE OF FLORIDA

COUNTY OF SANTA ROSA

I, MARY ELLEN THURSBY, Registered Professional Reporter and Notary Public, certify that I was authorized to and did transcribe the foregoing deposition; and that the transcript is a true and complete record of the statements given by the witness and transcribed by me.

I further certify that I am not a relative, employee, attorney, or counsel of any of the parties, nor am I a relative or employee of any of the parties' attorneys or counsel connected with the action, nor am I financially interested in the action. Dated this 2nd day of January, 2018.

MARY ELLEN THURSBY, RPR  
Notary Public, State of Florida  
My Commission No: #GG 142026  
Expires October 4, 2021